

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Fourteenth Meeting of the Committee of Experts
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**RESPONSE of GUYANA to the QUESTIONNAIRE
ON THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION SELECTED IN THE THIRD ROUND AND FOR FOLLOW-UP ON THE
RECOMMENDATIONS FORMULATED IN THE PREVIOUS ROUNDS**

August 18, 2010

SECTION I

**QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED
FOR REVIEW IN THE THIRD ROUND**

CHAPTER ONE

**DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES
MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE
CONVENTION)**

- a) Describe the laws, rules and/or measures that expressly deny or prevent favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of your country. Please attach a copy of the relevant provisions and documents.

The relevant statutes that determine allowable expenses are *Sections 16 and 18* of the *Income Tax Act, Cap. 81:01 which states as follows:*

“16 (1) For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year immediately preceding the year of assessment by that person in the production of the income, including-

- (a) sums paid by the person by way of interest upon any money borrowed by him where the Commissioner is satisfied that the interest was payable on

capital employed in acquiring the income;

(b) rent paid by any tenant of land or building occupied by him for the purpose of acquiring the income;

(c) where any person engaged in any trade, business, profession or vocation, has expended any sum in replacing plant or machinery which was used or employed in that trade, business, profession or vocation, and has become obsolete, an amount equivalent to the cost of the machinery replaced, after deducting from that cost the sum representing the total depreciation which has occurred by reason of exhaustion or wear and tear since the date of purchase of the plant and machinery and any sum realized by the sale thereof;

(d) any sum expended for repair of premises, plant and machinery in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed;

(e) bad debts incurred in any trade, business, profession or vocation, proved to the satisfaction of the Commissioner to have become bad during the year immediately preceding the year of assessment and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Commissioner to have become bad during that year notwithstanding that the bad or doubtful debts were due and payable prior to the commencement of the year, provided that all sums recovered during that year on accounts of amounts previously written off or allowed in respect of bad or doubtful debts be treated for the purposes of this Act as receipts of this trade, business, profession or vocation for that year;

(f) annuities or other annual payments which, subject to section 13, are chargeable to tax in the hands of the recipients under section 5 (d), whether payable within or without Guyana, either as a charge on any property of the persons paying them by virtue of any deed or will or otherwise or as reservation thereout, or as a personal debt or obligation by virtue of contract, provided that deduction shall not be allowed of any annuity or annual payment which directly or indirectly is, or is part of an arrangement, for any

purpose in respect of which no deduction is allowed under section 18 (a), (c), (d), (e), (f), (g) and (h) or any other section of this Act, and provided further that no voluntary allowances or payments of any description be deducted;

(g) rates and taxes on immovable property;

(h) premiums paid on any fire insurance policy on property used in acquiring the income;

(i)[Deleted by 9 of 1991]

(j)Such other deductions as may be prescribed by the Minister.

(2) The Minister may, by regulations, provide for the method of calculating or estimating the deductions allowed or prescribed under this section.

18. For the purposes of ascertaining the chargeable income of any person no deduction shall be allowed in respect of –

(a) domestic or private expenses;

(b) any disbursement or expenses not being money wholly and exclusively laid out for or expended for the purpose of acquiring the income;

(c) any capital withdrawn or any sum employed or intended to be employed as capital;

(d) any capital employed in improvements;

(e) any sum recoverable under an insurance or contract of indemnity;

(f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;

(g) any amounts paid or payable in respect of the United Kingdom income tax, or super-tax, or Commonwealth income tax;

(gg) income tax, corporation tax, property tax or any other identical or substantially similar tax;

(h) expenses in excess of the amount which the Commissioner considers reasonable and necessary having regard to the requirements of the trade and

business, and in the case of directors' fees or other payments for services to the actual services rendered by the persons concerned:

Provided that no deduction shall be allowed as head-office expenses in excess of one per cent of sales or gross income of any company (including premium income in the case a of company carrying on in Guyana insurance business other than long-term insurance business as defined in section 2 of the Insurance Act).”

The Revenue Authority being a body statutorily established in accordance with **Section 9 of The Revenue Authority Act 1996, Act No. 13 of 1996** ultimately means that that the legality of its actions is premised on the strict adherence to the laws which govern the Authority's establishment and the execution of its mandate.

As such, in the determination of allowable expenses or chargeable income a Tax Officer is strictly bound by the four corners of our **Income Tax Act, Cap. 81:01** more specifically **Sections 16 and 18** under the heading **ASCERTAINMENT OF CHARGABLE INCOME**.

As is evident from their respective marginal note, **Section 16** makes express provisions for the deductions which are allowed, whilst **Section 18** provides for deductions not allowable.

After a thorough analysis of **Section 16**, it is self evident that the section is devoid of any provision which allows for expenses which are incurred due to a breach of anti-corruption laws to be computed as an allowable deduction.

On the contrary, Section 18(b) may be construed to expressly disallow as a deduction any expense incurred due to a breach of anti-corruption laws, since it may be correctly argued that such an expense is not money wholly and exclusively laid out for or expended for the purposes of acquiring the income.

On the above premises, it is respectfully submitted that there is no legislation that sanctions favourable treatment of monies obtained in breach of anti-corruption laws but rather legislation that proscribes any favourable treatment.

- b) Describe the means or mechanisms to enforce the respective laws, rules and/or measures taken to prevent, investigate and/or sanction those who obtain favorable tax treatment for expenditures made in violation of the anticorruption laws of your country.**

Section 111 of the Income Tax Act cap. 81:01 addresses the offence of making a false statement or return provides a sanction of fifteen thousand dollars and also a fine of treble the amount of tax which has been undercharged in consequence of such false account and also to imprisonment for six months on summary conviction.

Section 217 of the Customs Act, Cap. 82:01 creates an offence of making a false declaration and provides a fine on summary conviction of \$10,000 together with imprisonment of not less than 12 months nor more than three years.

Section 218 of the said act provides a penalty for evading Customs laws regarding the importation and exportation of goods on conviction a fine of treble the value of the goods and to imprisonment for one year and forfeiture of all goods in respect of which any such offence is committed.

Section 221 of the said act prohibits a demand or acceptance of any benefit whether pecuniary or otherwise on account of anything done by him or omitted to be done. It also proscribes any person from giving offering or promising to give any such benefit and in both instances persons shall be liable on summary conviction to a fine of ten thousand dollars together with imprisonment for three years.

Section 222 forbids any officer from making any collusive seizure, or deliver up, or make any agreement to deliver up or not to seized any goods liable to forfeiture, or demands or takes any bribes, gratuity, recompense or reward for the neglect or non performance of his duty, or conspires or connives with any person to commit an offence against the customs laws for the purpose of seizing any goods, and obtaining any reward for any such seizure,

every such officer shall be liable on summary conviction to a fine of ten thousand dollars together with imprisonment for three years and be rendered incapable of holding any public office, and every person who gives or offers or promises to give or procures to be given, any bribe, recompense, or reward to, or shall make any collusive agreement with any such officer to induce him in anyway to neglect his duty, or conceal or connive at any act whereby any provisions of the customs laws may be evaded, shall be liable on summary conviction, to a fine of ten thousand dollars together with imprisonment for three years.

Under Tables- Provisions in Income Tax Act Applied to Corporation Tax Act at page 19, Cap. 81:03 Section 111 of the **Income Tax Act, Cap. 81:01** applies **mutatis mutandis** to Corporation Tax.

There are several administrative mechanisms in place which are established to detect corrupt or irregular practices by Tax Officers. These include;

- Audit and Verification Department whose functions are to audit declarations and records of taxpayer for accuracy and completeness.
- An Internal Audit Department responsible for reviewing the work of all the revenue departments to ensure compliance with standard operating procedures, regulations, orders and relevant statutes.
- A Special Investigations Department to investigate taxpayers suspected of being in default of Tax Obligations.
- Law Enforcement and Investigations Division which is tasked with the responsibility of investigating breaches of violations of all tax statutes in addition to enforcement activity to ensure compliance with these laws.
- Internal Affairs Division whose duty includes but not limited to investigating alleged or perceived corruption of employees of the Revenue Authority, recommending appropriate sanctions and where appropriate referring matters to the Police /Director of Public Prosecutions for further investigations and preferment of charges if necessary.

c) Briefly mention the objective results that have been obtained in applying the respective laws, rules and/or measures, providing any relevant statistical data available in your country, if possible for the last two years.

Numerous cases have been brought by the GRA in relation to violations of the tax laws, those that have resulted from acts of corruption especially in the area of Customs have been taken to the courts, and, others such as avoidance and evasion have been addressed through debt repayment schedules etc.

CHAPTER TWO

PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

- a) Are there laws and/or other measures in your country to deter or impede bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts? If so, please specify what they are, briefly describe them, and list and attach a copy of the related provisions and documents, referring in particular to the following aspects:**

i. Publicly held companies and other types of associations required to maintain accounting records of their operations in accordance with the accounting standards in force in your country.

There are laws which address the issue of conflict of interest, corruption and bribery. However, none is specific to bribery of foreign government officials.

All the relevant laws listed below require the maintenance of books, records, acquisition and disposition of assets and records, etc and internal accounting and audit controls.

The following laws regulate various aspects of registration, accountability and monitor and detect acts of corruption; (copies have been attached)

- The Companies Act 1995 Ch 89:01

- The Securities Industry Act 1998 Ch 73:04

-Guyana Revenue Act Ch 79:04

-Income Tax Act and amendments Ch 81:01

-Income Tax (in aid of Industry Act) last amended 1994 Ch 81:02

- The Corporation Tax Act 1971 and amendment 1996 Ch 81:03**
- The Customs Act 2005 Ch 82:01**
- Bank of Guyana Act 1995 and regulations and amendments 1996, 2004 Ch 85:02**
- Financial Institutions Act 1995, and regulations and amendments (1996, 2004)**
- Financial Administration and Audit Act Ch 73:01**
- The Anti-Money Laundering and Countering the Financing of Terrorism Act 2009***
- **The Money Transfer (Licensing) Act 2009***

*posted on OAS MESICIC website; those mentioned above are being submitted with this report. However, the websites of the Guyana Revenue Authority www.revenuegy.org ; the Bank of Guyana www.bankofguyana.org.gy; and, the Audit Office of Guyana www.audit.org.gy contain a number of these laws and regulations.

The Companies Act assigns to the accounting profession the power to set and oversee the application of accounting standards and invests it with the sole authority to carry out the audits of locally incorporated or external companies registered to carry on business in Guyana.

The Corporation Tax Act requires all companies to support their tax returns with financial statements audited by members of the Institute of the Chartered Accountants of Guyana.

The Securities Industry Act and the **Financial Administration and Audit Act** assign or delegate to the accounting profession specific roles with regard to compliance with internal controls.

The Financial Institutions Act assigns the audit of publicly owned companies and financial institutions to annual audits etc through the Audit Office of Guyana.

ii. **Rules regarding how these accounting records are to be maintained, indicating what length of time they must be kept; if they must be kept in books of account or any other medium that affords suitable protection for their contents; if said records are required to state all cash or in-kind expenditure, payments, or contributions, as well as specify their reason or purpose, and precisely identify their recipients; and if they must be substantiated with supporting documents containing the necessary information to confirm their veracity.**

YES.

Guyana's accounting standards are based on international accounting standards

(International Accounting Standards IAS, International Financial Reporting Standards IFRS) and international audit standards (International Standards of Auditing ISA). Guyana's Institute of Chartered Accountants is a member of the Institute of Chartered Accountants of the Caribbean (ICAC), the ACCA of the UK, and IFAC.

The Financial Institutions Act: Company Act Section 22, 23, 24, 25 (public disclosure in a newspaper etc) and **section 33 Financial Administration and Audit Act** detail the required information that must be provided by the oversight bodies such as the Bank of Guyana, the Securities Council, Audit Office of Guyana and the Guyana Revenue Authority.

iii. **Mechanisms to enforce the respective laws and/or other measures, such as the prohibitions against the establishment of accounts or operations without recording them on the books; registration of fictional expenditures or misstatement of the purpose thereof; adulteration of accounting records; use of false documents to support accounting records, and destruction of accounting documents before their prescribed custody period expires; as well as criminal, financial, or other penalties for those who infringe these prohibitions, and organs and agencies responsible for prevention and/or investigation of their violation and for imposing the appropriate punishment.**

Yes. These are clearly spelt out in the various statutes referred to above.

The Income Tax Act Section 105 false statements and returns, **the Customs Act**, the **Bank of Guyana Act**, **the Financial Administration and Audit Act**, **the Audit Act of Guyana** and **the Financial Institutions Act** all have sections that address this as well as assign penalties for such offences.

b) **In relation to question a), briefly mention the objective results that have been obtained in enforcing the respective laws and/or other measures to which it refers, such as steps taken to prevent or investigate their infringement and penalties imposed in that regard, providing any relevant statistical data available in your country, if possible for the last two years.**

No statistical data available.

c) **If there are no laws and/or other measures such as those mentioned in question a), briefly indicate how your State has considered the applicability within your own institutional system of the provisions contained in Article III (10) of the Convention.**

Guyana has several statutes and regulations where these provisions supported by administrative measures are in place as reflected in its answer to (a). In terms of Article 111 (10) deterrents, Guyana is in compliance.

CHAPTER THREE TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

1. Criminalization of transnational bribery

- a) **Does your State prohibit and punish, subject to its Constitution and the fundamental principles of its legal system, the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what penalties they provide, and attach a copy of them.**

Guyana does not have legislation specifically criminalizing transnational bribery.

However, Guyana has legislation that criminalizes bribery and corruption by public officers. None of which make specific provisions against transnational bribery nor do they make specific reference to the Convention against Corruption.

However, **Sections 332-337 of the Criminal Law (Offences) Act** define as offences:

- The taking of gratification other than legal remuneration in respect of an official act by a public officer
- The taking of gratification in order by corrupt or illegal means to influence a public servant
- The taking of gratuity for the exercise of personal influence with a public servant
- Abetment of the above offences by a public servant
- Corrupt transaction by an agent

And define the punishment for the commission of such offences.

The law addresses the actions of persons on both sides of the criminal transaction and defines in detail who is a public servant.

The Integrity Commission Act 1997 serves to maintain the integrity of persons in public office who are required to conform to a defined Code of Conduct. This Code does not specifically address the subject of bribery to or by officials of foreign governments. The Act however does require that public officials declare all gifts of over \$50USD in value. The Act provides for offences and penalties.

The Securities Industry Act, Sections 118, 141-4 , the Companies Act Section 518 (false information and offences, sections 520-526 offences, Sections 442-455, the Customs Act, Part X11 offences and penalties Sections 212, 219-220 (bribery), Part X111 legal proceedings, section 251 , and the Income Tax Act offences and penalties Section 103 , and The Anti-Money Laundering and Countering the Financing of Terrorism Act, all include sections that address non-compliance with these laws including corrupt practices and malfeasance and the corresponding offences and penalties.

- b) **If your State has criminalized transnational bribery, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.**

No cases have been brought before Guyana's courts.

- c) **If your State has not criminalized transnational bribery, briefly mention if your country has taken any steps to do so.**

Guyana has not criminalized transnational bribery. However, several pieces of legislation such as the **Anti-Money Laundering and Countering of Financing Act 2009 and Money Transfer Licensing Act 2009**, and the **Fugitive Offenders Act and its 2009 amendment**,* allow for such crimes to be addressed in a Guyana court once approved by another jurisdiction.

* these are posted on the [OAS MESICIC website](#)

2. **Assistance and cooperation in the case of States Parties that have not criminalized transnational bribery**

- a) **If your State has not criminalized transnational bribery, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.**

Yes, under the **Anti-Money Laundering and Countering the Financing of Terrorism Act (AMLCFT Act) and the Mutual Assistance in Criminal Matters Act 2010**, Guyana has the jurisdiction and the legislative framework to respond to such requests. The **AMLCFT Part V1** International Cooperation and **Part V111** Civil forfeiture and the 2nd Schedule Serious Offences include bribery and proceeds of crime.

Guyana is a party to the Inter-American Convention on Mutual Assistance in Criminal matters and also the CARICOM Treaty on Mutual Assistance in Criminal Matters.

Under the **Mutual Assistance in Criminal Matters Act 2010**, such assistance in criminal matters may be granted. **Part 111** provides that Commonwealth countries may make requests to Guyana for assistance in criminal matters and this Act is given application to countries other than Commonwealth countries, through bilateral or multilateral treaties with Guyana.

Also the **Fugitive Offenders Act of Guyana Part111** provides for the return of a person found in Guyana who is accused of an extraditable offense in any Commonwealth or treaty territory providing that there is a guarantee that the person will not be extradited to a third country. It should be noted that there is no exclusionary clause based on Guyanese nationality.

b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.

Guyana's Ministry of Foreign Affairs does not have any record of a request for assistance in transnational bribery.

CHAPTER FOUR

ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

1. Criminalization of illicit enrichment

- a) **Has your State established as an offense, subject to its Constitution and the fundamental principles of its legal system, a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what sanctions they provide, and attach a copy of them.**

Guyana has not criminalized illicit enrichment. However as stated in response to Chapter 3, Section 1, the **Criminal Law (Offences) Act** provides for personal gratification through illicit means. Both the **Income Tax Act** and the **Customs Act** address this issue also.

A senior official has to report annually under the **Integrity Commission Act** and has to declare all their bank accounts in Guyana or overseas and the quantity of funds in each, their liabilities, inheritance, other sources of income, property movable and immovable, gifts etc., including their tax declarations. The Act defines offences and how these are to be treated.

The Financial Intelligence Unit under the **Anti- Money Laundering and the Countering of Financing of Terrorism Act** has powers to investigate and obtain information from the commercial banking sector, assets etc.

- b) If your State has criminalized illicit enrichment, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.**

There have been no arrests, charges, or court proceedings in this period.

- c) If your State has not criminalized illicit enrichment, briefly mention if your country has taken any steps to do so.**

Guyana has expended considerable resources including loan and grant agreements with the IDB and the Millennium Challenge Account to improve accountability through strengthening the investigative and enforcement capacity of the Guyana Revenue Authority. Persons have been charged for corruption activities through the Customs Act in particular and brought before the courts.

Greater efforts have been made to enhanced inter-agency information sharing between key agencies such as the GRA, the FIU, the Bank of Guyana, law enforcement agencies and the Integrity Commission.

2. Assistance and cooperation in the case of States Parties that have not criminalized illicit enrichment

- a) If your State has not criminalized illicit enrichment, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.**

See answer at Chapter 3, section 2 (b). Through the Conventions and the Mutual Assistance in Criminal Matters Act 2010 and the Fugitive Offenders Act approaches to the Guyana government on such matters would be permitted.

- b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.**

The Guyana Ministry of Foreign Affairs does not have any record of a request for such assistance in relation to illicit enrichment.

CHAPTER FIVE

NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

If, subsequent to its ratification of the Convention, your State has criminalized transnational bribery and/or illicit enrichment, as provided at Articles VIII (1) and IX (1) of said Convention, please indicate if it has notified the Secretary General of the OAS.

NO

CHAPTER SIX

EXTRADITION (ARTICLE XIII OF THE CONVENTION)

- a) **Bearing in mind the provisions contained in Article XIII (1, 2, 3, and 4) of the Convention, under your country's legal framework, may this Convention be considered the legal basis for extradition in connection with the offenses it has criminalized in accordance therewith? If so, briefly describe any existing laws and/or other measures that allow as much, and attach a copy thereof.**

The **Guyana Constitution** does not include this Convention in the Fourth Schedule of international treaties it may take into consideration in its domestic law, or, by the executive, judiciary and legislature in keeping with **Articles 39** and **154** of the **Guyana Constitution** as regards human rights.

However, Section 5 of the Fugitive Offenders Act defines extraditable offences “ where the act of or omission, constituting the offence, however described, constitutes an offence, and is punishable with death or imprisonment for life or for a term of not less than 2 years, under the law of Guyana and of the commonwealth country or treaty territory” Under this Act persons can be extradited for such acts of transnational bribery and illicit enrichment. Under the **AMLCFT Act 2nd Schedule**, proceeds of crime and bribery are offences.

- b) **If your State may refuse extradition for the above offenses solely on the basis of the nationality of the person sought, or because it deems that it has jurisdiction over the offense, please indicate, when this occurs, if it submits the case to the competent authorities for the purpose of prosecution and reports the final outcome to the requesting State in due course. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.**

Guyana has no exclusionary provision in terms of extraditing its nationals on a request by a treaty country or a member country of the Commonwealth once the courts are satisfied that the requirements of the **Fugitive Offenders Act** as amended in 2009 are in order.

The **Fugitive Offenders Act** allows Guyana to extradite once there is no third party extradition and there is no case of discrimination of a person based on race, political views, tribal or other affiliation: **Section 8**.

- c) **Please indicate if, subject to the provisions of its domestic law and its extradition treaties, your State, upon being satisfied that the circumstances so warrant and are urgent, and at the request of another State Party to the Convention, takes into custody the person whose extradition is sought and who is present in its territory, or takes other appropriate measures to ensure their presence at extradition proceedings. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.**

The Fugitive Offenders Act and its 2009 amendment establishes the procedures in detail for handling a request for extradition and once the court is satisfied that these conditions are met then the request is granted.

- c) **Briefly state the objective results that have been obtained in enforcing the existing rules and/or other measures on extradition for the aforementioned offenses, such as extradition requests made to other States Parties for the purpose of investigating or prosecuting those offenses and procedures initiated by your State to attend to requests received by it from other States Parties with the same purpose, as well as the results thereof. The above information should refer, as far as possible, to the last five years.**

Guyana has not made a request to another state for extradition of any persons who may have committed these offences. Most of the requests for extradition from Guyana are drug related and other crimes, such as murder and rape, not transnational bribery or illicit enrichment.

However of note is the case of an extradition request by the USA government for a Guyanese national in 2008 on drug-related crimes where the Guyana court ruled that the person could not be extradited as there was no guarantee that the accused would not be extradited to a third country/party. As a result of this ruling, the Fugitive Offenders Act was amended in 2009 to prohibit extradition to third party/country.

SECTION II

FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORTS IN PREVIOUS REVIEW ROUNDS

SEE ANNEX 1 and 11 attached separately for GUYANA'S progress report on the recommendations of the First and Second Rounds

SECTION III

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please provide the following information:

- (a) State Party: GUYANA
- (b) The official to be consulted regarding the responses to the questionnaire is:
- () Mr.: _____
- () Ms.: GAIL TEIXEIRA
- Title/position: PRESIDENTIAL ADVISER ON GOVERNANCE
- Agency/office: OFFICE OF THE PRESIDENT
- Address: Shiv Chandarpal Street and South Road, Georgetown, GUYANA
- Telephone number: 592-225-2739
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**MECHANISM FOR FOLLOW-UP ON
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION**

Committee of Experts

OES/Ser.L
SG/MESICIC/doc.201/0

Guyana

**PROGRESS REPORT ON THE RECOMMENDATIONS OF THE FIRST AND SECOND
ROUND REVIEWS, August 13, 2010**

**SECTION I. PROGRESS IN THE IMPLEMENTATION OF THE
RECOMMENDATIONS**

Guyana submitted a Progress report to the Committee of Experts on the Follow Up to the Implementation of the Recommendations in the First Round Review and its Report in the Second Round Review on June 27, 2008 at the 13th meeting of the MESICIC. Its second progress report on the implementation of the recommendations to the First and Second Round Reviews was submitted on September 16, 2009. An update where applicable to the 2009 report was submitted in March 20, 2010.

This progress report is the third progress report on the recommendations to the First Round Review and the second to the recommendations in the Second Round Review.

Annex 1

A. FIRST ROUND REVIEW

1.1 Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

- I. **RECOMMENDATION 1.1:** *In the light of the comments made in this section, the Committee recommends that the State under review consider strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all public officials and employees, so as to permit the practical and effective application of a public ethics system.*

Measures Suggested by the Committee: see 1. a, b, c, d, e, f

Guyana has examined the suggested measures and responds as follows that:

The Cooperative Republic of Guyana reaffirms the position taken in its previous reports that the **Procurement Act 2003 and Regulations 2003 (in particular Sections 55 and 60 which refers to conflict of interest and offences), the Fiscal Management and Accountability Act 2003 (sections 10, 11, 49 and 85)** hold the Ministers and all public servants accountable even after the person/s cease/s to hold office.

The Audit Act 2004 (section 6 refers to conflict of interest in relation to the person who holds the office of the Auditor General) does address the recommendations at **1 a, d, e and f**. Furthermore, the Auditor General must declare to the Parliamentary Public Accounts Committee all pecuniary interests and whether they are conflict of interest issues or not.

In relation **1, b and c**, Guyana advises that in relation to these recommendations the Public Service Ministry and the Public Service Commission continue to make efforts to ensure that appointments are done in compliance with the Public Service Rules (1987) and the Public Service Commission' Rules (1998). (A copy of the latter was handed over on September 16, 2009).

Of note is that the constitutional revision in 2003 provided for the establishment of a Standing Parliamentary Committee to Appoint Members of Commissions whereby through and after a consensual parliamentary mechanism two persons would be nominated from civil society for the President to appoint as members of the Public Service Commission. The President after "meaningful consultation" with the Leader of the Opposition would appoint 3 other members as well as one member appointed by the President in his own deliberate judgement. The members elect their chairperson and deputy chairperson.

Since the enactment of these constitutional reforms, the PSC is appointed in this manner and functions with a full time chair and secretariat with budgetary allocations. This has contributed to greater confidence in the system of appointments, promotions and discipline.

The Committee is asked to note again that the Government drafted new Public Service Rules, but efforts to date to reach consensus with the trade union movement have been unsuccessful.

In relation **1 d**, as reported previously Guyana's **Integrity Commission Act** and the Code of Conduct contained in the said Act in Schedule 11 have established the legal framework for a public ethics system. All persons in public life whether elected (at the national, regional, local government levels including the President and all members of the Cabinet and all Members of Parliament) or appointed public officers including constitutional post holders (the Chancellor of the Judiciary, the Speaker of the National Assembly, the Judiciary) and Permanent Secretaries, Regional Executive Officers, the heads of agencies, the heads of the Disciplined Services are included.

In relation to **1 e**, various statutes such as the Audit Act, the Procurement Act, the Integrity Commission Act provide for restriction of former public servants participation and/ or require their accountability up to 5 years after demitting their post.

In relation to **1 f** as it relates to elected officials, all Members of Parliament are proscribed from having a pecuniary interest on a matter before the Parliament and they are prohibited from receiving monies for services for a person appearing/summoned before a Parliamentary Committee. This is clearly stated in the Standing Orders of the Parliament and any violation of this can be brought to the National Assembly's attention for disciplinary action.

I.2 Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanism

Recommendation 1.2

In light of the comments made in that section, the Committee recommends that the State under review perform an analysis on the enforcement and the efficiency of the standards of conduct for the conservation and proper use of the public resources as well as of the mechanisms that exist in Guyana to ensure compliance with these standards as instruments for the prevention of corruption. As a result of the review, the country under review could consider the adoption of measures to promote, facilitate, consolidate or ensure the application of these instruments for that end.

ADOPTED MEASURES:

Guyana reiterates its positions presented in the June 2008, September 2009 and March 2010 reports that “the implementation of the Procurement Act, the Fiscal Management and Accountability Act and the Audit Act coupled with the introduction and establishment of the expanded committee system in Parliament allowing for scrutiny and oversight of every sphere of government, through an empowered Public Accounts Committee and the four sectoral committees (economics, social services, natural resources and foreign relations), have improved fiduciary oversight.”

This expanded committee system which was established in 2003 has been evolving and demonstrating its usefulness to the greater efficiency, transparency and accountability of government and use of resources.

The Public Accounts Committee, chaired by the Opposition, meets weekly where Chief Accounting Officers appear before the Committee to answer questions on the expenditures of the budgeted allocation to their sector/agencies. The PAC submits its findings to the National Assembly which must be put to the floor for a vote and the Minister of Finance must respond to the report within 90 days through the submission of a Treasury Memorandum advising of government’s action in relation to these findings. The latter measure was introduced in the new 2006 Standing Orders and is being adhered to.

Since the introduction and implementation of these revised Standing Orders in the 9th Parliament, Ministers including the Prime Minister, have been called to appear before the 4 sectoral committees to answer issues relating to policy, administration and performance of their sectors.

In addition the meetings of the Public Accounts Committee and the 4 sectoral committees of the Parliament are open to the public and the media. These Committees also submit annual reports to the National Assembly which are available to the public.

As reported previously the Audit Office of Guyana and the Auditor General report directly to Parliament and are under the “general supervision of the Public Accounts Committee” as prescribed in the constitution

Considerable technical assistance, funding, administrative and legislative reforms and energy have been expended on the strengthening and improving fiduciary oversight, transparency and accountability from 2004 to the present with the GoG/IDB funded Financial Fiscal Management

Programme, the GOG/IDB Public Service Reform programme, and the Millennium Challenge Account/MCC.

In addition to what was reported in the June 2008, September 2009 and March 2010 reports, Guyana has improved and strengthened its tax administration system, introduced greater fiscal oversight and faster more efficient business start up/registration. The latter reducing the time to start up businesses from 42 days to 12 days will not only contribute to a better investment climate and economic growth but it has certainly reduced opportunities for corruption.

There is now a restructured Guyana Revenue Authority; reorganized and more effective tax, customs and VAT revenue systems; more strategic economic forecasting capacity; enhanced fiscal policy analytical capability; modernized Parliamentary fiduciary oversight, public accounts and library research capacity; upgraded procurement systems/procedures; and simplified, streamlined business registration process. The Millennium Challenge Corporation website indicated improvement in Guyana's indicators on Ruling Justly and Corruption, etc.

Furthermore, Guyana wishes to advise the committee that after a 3 year project, it has in 2010 rebased its national accounts formerly using base year 1988 to base year 2006. A copy of the publication on this important step forward in producing accurate data was shared in the March 2010 update as Appendix 1. This production is the first comprehensive report of its national accounts since 1960 when it commenced collecting statistics of its national accounts.

As reported previously, the National Procurement and Tender Administration website (see <http://nptaguyana.org/procurement>) has continued to improve; greater information is shared with the public, tenders are posted including the minutes of the tender awards. The most recent minutes at the time of reporting are dated July 27, 2010. One can access minutes dating back to 2007 and the tender notices posted at the time of reporting were August 9, 2010 whilst the contract awards are publicly announced weekly. These initiatives continue to be part of an ongoing process to improve transparency and accountability.

1.3 Standards of conduct and mechanisms concerning the measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Recommendation 1.3

In light of the comments made in that section, the Committee suggests that the State under review consider strengthening the existing mechanisms that require public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware to the appropriate authorities.

Measures suggested by the Committee:

a. Establish measures and systems that require all public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, and facilitate compliance with this obligation through whatever measures are considered appropriate.

b. Adopt and implement protection measures for public servants to encourage them to report acts of corruption in good faith.

c. Review the application of the provision contained in section 28(3) of the Integrity Commission Act, in order to ensure that it does not become an impediment to, or inhibit, discourage, or intimidate public officials from reporting acts of corruption in the performance of public functions of which they are aware.

Guyana has nothing further to report concerning (a) and (b). The recommendation at (c) is under review by the Attorney General Chambers. However, it can be argued that public officials must also be protected from willful mischievous and wrongful accusation which is what Section 28(3) tries to guard against.

d. Implement adequate measures, including training for public servants on how to report acts of corruption, and the requisites for reporting them, and on protection mechanisms for those who report such cases in good faith.

Adopted Measures:

As reported previously in 2009 over 500 members of the Guyana Revenue Authority have undergone various training programmes to improve the efficiency and transparency of the operations of various departments, including the Customs Department, income tax and corporate tax departments, and the VAT unit. Training is also on going in the Audit Office.

Training is on- going and constant throughout the public service to improve the efficiency and effectiveness of delivery of services and thereby reduce the opportunities and areas for corruption.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE 111.PARA 4 OF THE CONVENTION)

Recommendation 2

In light of the comments made in that section, the Committee recommends that the State under review consider strengthening the systems for declaring income, assets and liabilities.

Measures suggested by the Committee:

a. Maximize the use of systems to study the contents of the declarations of income, assets and liabilities, and to adopt suitable measures to detect and prevent conflicts of interest and cases of illicit enrichment, using modern technologies, whenever possible, to expedite their presentation and improve systems, analysis or investigation of cases.

b. Consider the possibility of making adjustments or legal reforms to the power granted by the Integrity Commission Act to the Commission or the President, whichever is applicable, in order to impose the appropriate administrative sanctions without the authorization of another organ or official.

c. Consider adjustments or legal reform of the existing system of sanctions, including other conducts, such as the late presentation of declaration or other types of sanctions.

d. Review the possibility of extending the five-year term established in section 23 (b) of the Integrity Commission Act as a limit for instituting legal proceedings in respect of such unlawful acts committed by an official who no longer performs public functions.

e. Consider the advisability of granting to a body or official other than the President the administration, verification and application of the system for declaring assets and liability in respect of members of the Integrity Commission.

f. Regulate the conditions, procedures and other relevant aspects as regards making disclosures of income, assets, and liabilities public, as appropriate, in accordance with the fundamental principles of the domestic legal system.

ADOPTED MEASURES:

In relation to 2 a, c, and f

Guyana's reports of June 2008 and March 2010 advise that GRA has improved the Income Tax Department and established a VAT system with a fully staffed and operational Department. Working persons and companies are issued TIN (Taxpayer Identification Numbers) and certificates. This new system coupled with the computerization of the GRA linked with the National Insurance Scheme and the Deeds Registry for registration of companies has enhanced the effectiveness of the GRA and improved its investigative capacity. With the assistance of technical and financial support from the Millennium Challenge Corporation these efforts in 2009 have been further strengthened.

The new Anti-Money Laundering and Countering Financing of Terrorism Act, Act No. 13 of 2009, enacted on August 14, 2009 and the Money Transfer Agencies (Licensing) Agencies Act 2009, Act No. 20 of 2009 also enacted on August 14, 2009 have further strengthened the capacity of the State to address these recommendations.

Guyana is not convinced that the recommendation at **(d)** is necessary at the moment but it will continue to keep it under review. In relation **(b)** and **(e)** these continue to be under review.

In relation to **2 f**, it should be pointed out that all constitutional post holders, elected officials such as Members of Parliament including members of constitutional commissions, salaries and stipends are public knowledge as their remuneration is published by order in the National Assembly and published in *the Official Gazette*.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

Recommendation 3:

Taking into account the considerations stated in that section, the Committee suggests that the State under review consider strengthening or creating oversight bodies to enforce compliance with the provisions of Chapter III, paragraphs 1, 2, 4 and 11 of the Convention, providing them with the

resources needed to carry out their functions in full and establishing the mechanisms necessary for the institutional coordination of their actions and their periodic evaluation and follow-up.

ADOPTED MEASURES:

Guyana continues through administrative measures to strengthen the oversight bodies. The GOG/IDB Citizen Security Programme and the Justice Sector Reform Programme are both in operation and changes are being implemented which are in accord with this recommendation.

In keeping with Chapter 111, paragraphs 1, 2, 4, Guyana is in compliance -- it has enshrined in the Constitution, legislation and administratively Parliamentary and extra-parliamentary mechanisms for oversight. These have been highlighted earlier in the progress reports on the First Round in June 2008, September 2009, March 2010 and herein.

In keeping with paragraph 11, through the assistance of citizens and public servants as well as greater transparency and accountability, Guyana has been able to bring more persons involved in corrupt activities before the courts, including Chief Accounting Officers, Customs Officers, and law enforcement officers over the last 2 years.

4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANISATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.1 General participation mechanisms

Recommendation 4.1:

Given the recommendations formulated with respect to each of the following mechanisms, consider the need for Guyana to reassess and strengthen its general approach for encouraging the participation of civil society and non governmental organizations in efforts to prevent corruption.

As reported in June 2008 Guyana has developed layers of citizen participation and involvement including the establishment of a Guyana Chapter of Crime Stoppers, a broad-based National Commission on Law and Order, the inclusion on state boards of representatives of the business community, labour movement, religious bodies, and representatives of the parliamentary political parties, etc.,. Those measures continue to be in operation.

Sectorally and at regional and community levels there is a robust involvement of communities in various issues of national and neighbourhood concerns. Community members are outspoken on their views of corruption, non- or poor performance of elected officials and expose shoddy work by contractors.

The media plays an active role in this area as well.

4.2 Mechanisms for access to information

Recommendation 4.2:

The Committee believes that Guyana should consider preparing and approving legal provisions supporting access to information.

Guyana has drafted an Access to Information Bill which is under review and it is anticipated that it shall be tabled in 2010. Guyana has also expanded use of and resort to official websites to inform the public.

Measures suggested by the Committee:

a. Develop and regulate the processes through which requests are received in order to respond to them on a timely basis, for appeals in cases where requests are denied, and establish sanctions in the event of failure to comply with the obligation to furnish public information.

b. Consider the creation or adoption of systems to ensure that the public has access, when appropriate, to information on public government organizations and their financial and program planning activities, specifically including oversight bodies responsible for matters covered by this report.

Measures adopted:

First of all there has been a significant improvement in the availability of government information over the last 2 years, this has resulted from improved data collection and reporting capacity across the state sector.

In addition to the submission of all government policies, annual reports and accounts of government agencies to the Parliament, government policy, programmes and data are posted on an array of various websites. Examples of key ministries/ agencies that have websites and which recently expanded and improved them – the Guyana Revenue Authority, the National Procurement and Tender Administration, the Guyana Information Agency, Go-Invest, Low Carbon Development Strategy, Ministries, and state agencies etc).

The Opposition actively uses the Question period in the Order Paper at each sitting to raise issues with government Ministers. In this 9th Parliament (2006-2011) over 475 written questions have been posed to Ministers and answered in the National Assembly.

After each Cabinet meeting, the Head of the Presidential Secretariat holds a post-cabinet press conference advising the public of Cabinet decisions including its “no objection” to awards of contracts recommended by the National Procurement and Tender Administration.

Guyana will be obtaining two fibre optic cables (one installed by a private telephone company through Suriname and the other by the government in cooperation with Brazilian firms) which will expand and enhance the country’s connectivity and thus improve access to information. A vast array of government information which is now posted on ministries/ state agencies’ websites will reach more people in the country especially the far interior and therefore enhance their access to information and contribute to greater transparency and oversight of government.

On August 4, 2010 the Procurement (Amendment) Act No. 13 of 2010 was enacted to allow for the use of the electronic media for advertising tender notices. As a result, the government as of August 11, 2010 announced that it had launched a website <http://www.eprocure.gov.gy> on which all government advertisements and notices will be placed including the publication of notices, job vacancies, and the procurement process for goods and services as a part of its ICT strategy and its incremental progress towards e-governance.

4.3 Mechanisms for consultation

Recommendation 4.3.1:

Develop standards and procedures capable of supporting consultation mechanisms to encourage civil society organizations and citizens to provide opinions and proposals to be taken into account.

Recommendation 4.3.2:

Design and implement programs to publicize consultation mechanisms, and when appropriate, provide civil society, nongovernmental organizations and public officials and employees with the training and instruments necessary for effective implementation of those mechanisms.

Measures adopted in relation to recommendation 4.3.1 and 4.3.2:

The policy of the government is grounded in the philosophy of consultation with the citizens at the national, regional and community levels as well as community meetings at the grass roots in keeping with Article 13 of the Guyana Constitution.

The constitution also enshrines the participation of civil society through a consensual parliamentary mechanism in the appointment of members to the Judicial, Police and Public Service Commissions and the 4 Human rights Commissions – the Rights of the Child Commission, the Women and Gender Equality Commission, the Indigenous Peoples Commission and the Ethnic Relations Commission. The Ethnic Relations Commission, the Women and Gender Equality Commission and the Rights of the Child Commission were appointed and functioning. The members of the Indigenous Peoples Commission were recently approved on August 5, 2010 by the National Assembly and this commission will be appointed and functioning before year end.

All policies and legislative reforms go through layers of consultations with the relevant non-state actors before they are adopted or taken to the National Assembly. Many bills (22 in 2009 and 2010) were tabled and sent to Parliamentary Special Select committees for intense scrutiny and amendments and 10 invited submissions from the public.

4.4 Mechanisms to encourage participation in public administration

Recommendation 4.4:

The Committee considers it useful to formulate recommendations 4.3.1 and 4.3.2 of this section with respect to the mechanisms to encourage participation in the public administration.

Measures adopted:

See Response to 4.3

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 5.1:

Ensure that both the mutual assistance treaties signed and the Convention are applied in specific cases of corruption.

As reported previously Guyana signed and ratified the Inter-American Convention on Mutual Assistance in Criminal Matters as well as the UN Convention on Corruption and the CARICOM Cooperation Treaty on Matters of Mutual Criminal Matters. The latter Treaty has been enacted into domestic legislation. The Mutual Assistance in Criminal Matters Act No. 38 of 2010 was enacted in June 9th, 2010.

Recommendation 5.2:

Promote the adoption and effective application of the Mutual Assistance in Criminal Matters Bill.

This is actively being pursued with treaty parties with on-going engagements.

Recommendation 5.3:

Determine and prioritize specific areas where technical cooperation by other States party might be useful in strengthening their capacities for preventing, detecting, investigating and punishing acts of corruption.

This matter is under constant review between Guyana and its bilateral, regional and multi-lateral partners. Guyana has also asked the OAS for technical assistance in drafting cybercrime legislation and training support for detection and prosecution.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1, 6.2, 6.3:

Guyana is in compliance with these recommendations

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, as appropriate, training programs for public officials responsible for applying the systems, standards, measures and mechanisms considered in this report, to guarantee that they are properly understood, handled and applied.

This is on-going

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this report, and notify the Committee accordingly through the Technical Secretariat. For said purposes, Guyana could take into account the list of broader indicators applicable to the inter-American system that were available for selection, as necessary, by the State under review, and which have been published by the Technical Secretariat of the Committee on the OAS Internet website. The State under review could also take into account any information arising from the review of mechanisms developed pursuant to recommendation 7.3 below.

Guyana will seek to do so when required.

Recommendation 7.3:

Implement the recommendations contained in this report and develop, as appropriate and where none exist, procedures to review the mechanisms mentioned herein.

This is on going.

Recommendation 7.4:

Optimize the general statistical records of the oversight bodies so as to allow objective review of the results of the legal framework and other measures that are adopted.

This is on going.

ADOPTED MEASURES:

Guyana is making efforts to be in compliance with these recommendations. With improved reporting from the oversight bodies, greater capacity being developed within state agencies, use of modern information-based technology and information-management systems, changes in policy making and efforts to rectify weaknesses of a systemic or administrative nature are easier and more effectively addressed. The introduction of TRIPS (Tax Revenue Integrated Processing System) and IFMAS (the Integrated Financial Management and Accounting System) across all ten administrative regions and government agencies have vastly strengthened revenue collection, more efficient management of financial resources, improved budget forecasting, planning and implementation.

The legislative agenda in 2010 includes new interventions to improve the efficiency of the system.

ANNEX 11

B. SECOND REVIEW

I. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE 111 (5) OF THE CONVENTION)

1.1 Systems of Government Hiring

In light of the comments made in the above-noted section, the Committee suggests that The Cooperative Republic of Guyana consider the following recommendation:

- *Establish, maintain and strengthen the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems.*

In meeting this recommendation, the Co-operative Republic of Guyana could take the following measures into account:

- a) Adopt, through the appropriate legislative and/or administrative procedures, provisions that explicitly provide that government hiring into the Public Service is to be based on the principle of merit and set out criteria upon which the evaluation will be made.*

Guyana's Public Service Rules 1987 and the Public Service Commission Rules 1998 in relation to other public sector entities require that the system is fair, transparent and based on merit. Guyana reiterates there is a complaints mechanism to the Public Service Commission and to the constitutional provided Human Rights Commissions (Ethnic Relations and Women and Gender Equality Commission) as well as a recourse to the courts.

- b) Consider the necessity of making examinations and/or interviews a mandatory requirement for all or some of the posts in the public service and also to establish mechanisms that provide clearly defined criteria on the manner in which these examinations and interviews would be carried out.*

Guyana has already indicated that the PSC Rules 1998 provide for this and where applicable this is done for senior positions when required but it does not agree that this should be instituted across the board and for all applicants to the public service. Further Guyana in its September 2009 progress report included the issue of the paucity of available skills.

- c) Adopt, through the appropriate legislative and/or administrative procedures, provisions that set out clear parameters on the conditions for the use of temporary appointments, including definitions of the terms "temporary or seasonal nature" and the term "urgent"; provide limits to their duration and require written reasons for the decision.*

Guyana reiterates what it stated in the September 2009 progress report that the PSC no longer hires temporary staff and other information it provided. Guyana emphasizes that in 2007 the

PSC delegated its authority as provided for in the constitution to Permanent Secretaries, Heads and Regional Executive Officers as Chief Accounting Officers, to appoint certain categories of officers on the GS 1 and GS 2 salary scales by way of contract/gratuity. The probationary period for the first appointment into the service is still in force.

It should be noted that employees in the public sector can elect to be placed on contract or on the fixed establishment.

Guyana has developed administrative guidelines which all Permanent Secretaries and Heads of Department are fully au fait with and must comply. There have been a number of cases in recent times where Permanent Secretaries and Project managers of Project Execution Units have been surcharged.

d) Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for vacancies within the public service, and ensuring that use is made of the mass media (e.g. newspapers or web pages) when advertising outside the Public Service.

Guyana is in compliance with this. In addition to advertisement of posts internally in the public service and in the newspapers, since August 2008 the Public Service Commission, as well as the Police and Teachers' Service Commissions, now place full page ads in all the newspapers declaring all the new appointees for each of the posts, promotions, dismissals, transfers. This allows for the public to be better informed and in the case of any dissatisfaction people can make complaints.

One of the major developments since 2009 has been the development of the country's ICT Strategy with somewhat improved connectivity thereby allowing government agencies to establish websites which provide valuable information to the public as well as place advertisements for vacancies. A quick perusal of some of these websites may be helpful. To further transparency, the government announced the establishment of the eprocure website (www.eprocure.gov.gy) which includes notices for the delivery of goods and services as well as posting of vacancies in the public sector. See 4.2 in this progress report on the First Round review.

e) Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for challenging the substantive aspects of the hiring process.

Guyana advises that provisions are in place in the Public Service Commission Rules (1998), the Public Service Appellate Tribunal, and under the Anti- Discrimination Act, the Equal Opportunity Act and the Constitution through recourse to the courts.

f) Adopt, through the appropriate legislative and/or administrative procedures, provisions that regulate the hiring of judicial and legal officers, based on the principles of merit and equality, setting out the criteria upon which the evaluation will be made and provide clearly defined criteria on the manner for the advertisement of posts.

In keeping with this recommendation Guyana has completed its consideration of new Rules for the Judicial Service Commission in regard to appointments, transfers, etc and a draft Code of Conduct for Judicial officers. These are expected to be laid in the National Assembly after it reconvenes after recess in October 2010.

- g) Adopt, through the appropriate legislative and/or administrative procedures, provisions that regulate the hiring of public servants serving in the offices of the Auditor General, based on the principles merit and equality, providing clearly defined criteria on the manner for carrying out examinations and the advertisement of posts.*

Guyana reiterates that the Audit Act, No. 5 of 2004, Section 6 addresses the issue of the appointment and removal of the Auditor General as prescribed in Article 225 of the Guyana Constitution with the approval of the Parliamentary oversight body, the Public Accounts Committee. Section 13 addresses the issue of the employment of officers and employees of the Audit Office under the Rules, Policies and Procedures Manual, posted on the Audit Office of Guyana website www.audit.org/gy. Job vacancies are posted on that website. Filling of Senior Offices posts in the AOG are subject to the approval of the Parliamentary Public Accounts Committee. Section 15 explicitly states that employment must be based on merit, fair and equitable treatment. The complaints mechanism of a disgruntled employee or an applicant is the Public Service Commission.

1.2 Government Systems for the Procurement of Goods and Services

- Promote the adoption of provisions, in the government systems for the procurement of goods and services, which ensure the principles of openness, equity and efficiency under the Convention.*

In meeting this recommendation, the Co-operative Republic of Guyana could take the following measures into account:

- a) Develop and implement provisions that punish public officials in cases of non-compliance with the public procurement rules, without prejudice to any other laws under the existing system.*

Permanent Secretaries are surcharged when there is breach of these rules: in the case of abuse or corruption, persons have been charged and brought before the courts. In a number of instances in the last year, Permanent Secretaries/project managers have been surcharged. In addition, one Regional Executive Officer, a number of Customs Officers and policemen have been charged and are before the courts.

The intelligence hotline to allow for anonymity through the Guyana Revenue Authority's website www.revenuegy.org proves useful to exposing corruption as well as the invitation to public to suggest an audit on the website for the Audit Office of Guyana.

- b) Establish the Public Procurement Commission or another independent body responsible for monitoring public procurements and procedures, in order to ensure that the procurement of goods and services and the execution of works are done in a fair, transparent, competitive and cost-effective manner.*

Guyana reiterates its response in its September 2009 progress report that the National Procurement and Tender Administration is the national authority provided for in the Procurement Act. The Public Procurement Commission once established under the Procurement Act would oversight the NPTA but the procurement of goods and services as established will continue to be implemented by the NPTA as provided for in the said statute.

The establishment of the PPC is through a parliamentary mechanism through the Public Accounts Committee and efforts to reach consensus on nominations to the Public Procurement Commission are on-going.

The Ministerial (sectoral) tender boards, Regional tender Boards and the local government bodies tender boards are have guidelines in relation to their limits and procedures. Sole sourcing must receive the approval of the NPTA and Cabinet with justification and select /restricted tenders as specified in the Procurement Act.

- c) *Establish a national registry of contractors of works, goods or services, mandatory to all State bodies, which contemplate the possibility of ensuring that the registry also includes a list of sanctioning contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention.*

Guyana reiterates that the Procurement Act 2003 and regulations do not make such provisions. Under Section 6, allows for the rejection of a contractor who fails to fulfill those requirements of eligibility. The courts are used to bring contractors to account for poor performance and the public's knowledge.

From time to time for foreign funded programmes, there is a system of pre-qualified contractors which require the approval of the donor agency as well as their approval of the awardees before it is sent to cabinet for "No objection" .

Guyana passed an amendment to the National Insurance Scheme Act in 2009 making it obligatory for contractors desiring to bid for contracts in the state sector to also be in compliance with the NIS requirements.

Guyana reiterates that its emphasis is on encouraging the creation of more entrepreneurs throughout the country and to facilitate the development of their capacity to contribute to economic growth and generate economic activity across the ten Administrative Regions. In this process some will fail and others will grow.

- d) *Implement a mechanism, through legislative and/or administrative means, to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons.*

Guyana reiterates that the Procurement Act 2003, Section 5 stipulates the grounds for eligibility and ineligibility for contractors or persons to bid. In other sections, it stipulates the mechanisms for rejection of a bid and the complaints mechanisms.

- e) *Develop and implement provisions that establish the ineligibility of bidders or contractors who have ties to the procuring entity or who are directly involved in the determination of needs or specifications, appraisal of bids, selection of alternatives, or approval of purchases or payments.*

Guyana is of the view that Section 60 (3) (4) of the Regulations to the Procurement Act 2003 addresses the issue of conflict of interest and sanctions. Section 55 (1-6) addresses the issue of confidentiality of information attending the procurement process by public officers and members of procurement entities and the consequential sanctions.

- f) *Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeline of the purchase.*

The preparation of the national budget requires that the agencies provide the Budget Office with the profiles of the capital works and services for the coming year. On technical projects, studies and designs are required before going to tender and include an engineer's estimate and specifications for the profile. Where required consultants are hired to prepare the technical specifications for the tender profile. Approval to proceed to tender by an agency has to be obtained from the Budget Office which considers such requests at bi-monthly meetings with the agencies which must also submit their projections of implementation of their programmes and budgetary releases.

- g) *Implement provisions that establish minimum time limits for the publication of tendering opportunities in appropriate media.*

Unless there is an emergency such as a disaster (fire, flood, epidemic, security) the minimum period is two weeks.

- h) *Strengthen and increase the scope of use of electronic forms of communications, such as the internet, for publicizing the tender opportunities, status of bids and awards and the progress in the execution of major projects.*

Guyana reiterates that this is being done for large (over \$1MG approx 5,000USD) tenders and that in addition to advertisement in the media, Guyana is making efforts to improve connectivity through the provision of two fibre optic cables. Guyana holds to the view that improving the competitive environment between bidders and reducing opportunities for monopolization of the tender awards by a few companies is best for the development of the country. As reported earlier in this progress report Guyana has introduced an eprocurement website as August 11, 2010 on which all notices of tenders, advertisements, advisories and vacancies are being posted

- i) *Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means.*

As pointed out during the 2nd round review, the entire country is not connected, the media, websites, are all used as well as public tenders in small communities through their means of communication. However as August 11, 2010 the new eprocurement website has been launched and operational.

- j) *Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those for public works.*

Guyana repeats that standard bidding documents are in place and used for tenders at different sizes, types and scope. These are posted on the NPTA website and other government agencies websites.

Standard evaluation guidelines have been developed by the NPTA specific to the type of tender, monies and technical specifications involved. In keeping with the donor funded programmes, the criteria are based on the requirements of the given donor agency. Guyana reiterates that an examination of the NPTA website SBDs (Standard Bidding Documents) will provide evaluation formats, SDBs for various tenders etc..

- k) *Implement provisions that require that the outcome of a bid evaluation be clearly and accurately substantiated, when applicable.*

Guyana reiterates that all the bids are publicly opened at a set time and date in the presence of all the bidders and there is a public check to ensure that all necessary documents are submitted with the bids. The criteria are identified to the bidders. The same holds for the outcome of a bid evaluation, the bidders that were not awarded are advised within 7 days of the award and the minutes are posted on the NPTA website. The awardees for each tender that has received a “No objection” from Cabinet are publicly announced in the media on a weekly basis. Due to poor response or unsatisfactory responses tenders are re-advertised.

- l) *Implement provisions that facilitate the participation of citizen oversight mechanisms in monitoring the execution of contracts where their nature, importance or magnitude so warrants, in particular public works contracts.*

On a weekly basis all the tenders which Cabinet has given a “No Objection” to in keeping with the Procurement Act 2003 are announced to the media and carried in the newspapers and on the air. The media and citizens can and do publicly bring to the NPTA or the given sector their concerns about the process of awarding the tender.

Communities are alert to their role and express their views in the media or to their elected representatives regarding the performance of the contractors carrying out works in their communities. Government policy requires that the contracts must be publicly posted in the local government or village office for the public in that area to be able to inspect the terms etc of the contract.

- m) *Harmonize the provisions contained in the Procurement Act and the Regulations which allow challenges to the procurement process at the administrative level.*

This is under review.

- n) *Maintain and publish statistics that reflect the nature of contracts awarded, the proportion that is by public tender, the proportion that is by restricted tendering, request for quotations and single source procurement.*

The NPTA website posts by sector the number of awards, the value of the award, the name of the contractor, etc., Guyana has not advanced to the level recommended in (n) but it is working towards it.

2. SYSTEM FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE 111 (8) OF THE CONVENTION)

In light of the comments made in the above-noted section, the Committee suggests that the Co-operative Republic of Guyana consider the following recommendations:

- *Adopt a comprehensive legal and regulatory framework that provides protection for public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with its Constitution and the basic principles of its domestic legal system.*

In meeting this recommendation, the Co-operative Republic of Guyana could take into account the following measures:

- a) *Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings;*

Guyana does offer protection to the best of its ability and in keeping with available resources. The Guyana Chapter of the Crime Stoppers and the GRA intelligence hotline provide anonymity to the callers who provide valuable information on fighting crime and in particular corruption.

Under the new Anti-Money Laundering and Countering the Financing of Terrorism Act 2009, section 11 gives protection from criminal or civil liability for sharing information with the Financial Intelligence Unit. Section 5 makes “Tipping off” the accused based on knowledge that a disclosure has been made by a person to the FIU an offence.

New legislative reforms such as the Evidence Act No 19 of 2008 provides for the use of audio-visual links up in the courts to allow for the protection of witnesses. The provision of safety of witnesses for the identification of the accused such as the construction of two way mirrors in police stations under the IDB/GOG Citizen Security Programme offer better protection of witnesses than 2 years ago.

Whistle blower legislation is being drafted and a draft bill on Witness protection is also under consideration. Guyana is using the model legislation developed by the OAS on whistle blowers as a guide.

Guyana is as large as England and Scotland with a small population and there are serious challenges to do more than what it is doing now, changing identities or offering expansive witness protection systems are not feasible at this time.

- b) *Protection of whistleblowers and their families, not only in relation to their physical integrity but also as it concerns the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers;*

Guyana is interested in exploring different models of a simplified witness protection system and whistle blower legislation and would be interested in receiving technical assistance in order to do same.

- c) *Expand the existing mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who, in good faith, report acts of corruption;*

See answer to 2 (a) above

- d) *Creation of mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it;*
- e) *Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens;*

In response to (d) and (e), Guyana enacted the Evidence (Amendment) Act 2008, Act No. 19 Of 2008, to allow for the use of and provision of facilities for audio-links in the court room in order to protect the identity of the witness, to reduce intimidation or fear of appearing in the court with the perpetrator. Whilst this legislation is not designed exclusively for whistle blowers it provides one more layer of protection that did not exist in June 2008.

The Director of Public Prosecutions can apply to the courts for a protection order etc and the Police must comply.

- f) *Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.*

Guyana has reported on this in its September 2009 progress report and is open to receiving further technical support from its bilateral and multilateral partners. It has indicated in 2010 its interest in receiving technical assistance from the OAS on addressing cybercrime.

- g) *A simple whistleblower protection application process.*

See (b) above

- h) *Provisions which provide for administrative and criminal sanctions for the failure to observe the rules and/or duties relating to protection.*
- i) *Provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area.*

Guyana has nothing further to report on (h) and (i) at this time

3. ACTS OF CORRUPTION (ARTICLE VI(I) OF THE CONVENTION)

In light of the comments made in the above-noted section, the Committee suggests that the Co-operative Republic of Guyana consider the following recommendation:

- 3.1. *Modify Section 338 (2) (a) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(I)(a) of the Convention, by incorporating therein, the elements of directly or indirectly accepting a bribe by a public servant or soliciting it.*
- 3.2. *modify Section 338 (2) (b) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(I)(b) of the Convention, by incorporating therein, the elements of directly or indirectly offering a bribe to a public servant.*
- 3.3. *Criminalize those who act as accessories after the fact with respect to corruption offenses, as required by Article VI(I)(e) of the Convention.*

Guyana has reviewed the recommendations at 3.1, 3.2, 3.3 and is of the view that the Criminal Law Offences Act, Sections 338, 333, 334, 335, and Sections 24, 26, 27, 31 and 33 are in compliance.

The new comprehensive Anti-Money Laundering and Countering of Financing of Terrorism Act 2009 (which repealed the Prevention of Money Laundering Act) strengthens the legislative framework on acts of corruption and allows for asset forfeiture and international cooperation on such matters (see Part VI section 76, International Cooperation), Part V111 (civil forfeiture) and Second Schedule Serious Offences.

4. GENERAL RECOMMENDATIONS

Based on the review and contributions made throughout this Report, the Committee suggests that the Co-operative Republic of Guyana consider the following recommendations:

- 4.1 *Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.*

On going

- 4.2 *Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made therein.*

Through the Millennium Challenge Threshold Programme advances have been made in creating computerized data collection and data analysis systems.

SECTION II: DIFFICULTIES IN THE IMPLEMENTATION OF THE RECOMMENDATIONS (ONLY RESPOND TO THIS SECTION IF YOUR COUNTRY CONSIDERS IT NECESSARY)

A. FIRST ROUND AND SECOND REVIEWS:

Guyana continues to strive to implement improved systems of transparency and accountability within its human, physical and financial resources available. There are always challenges and competition between and for limited resources- human, financial and technical. The constitutional and parliamentary reform process while establishing a modern progressive model of inclusive governance also causes delays as on key and critical issues and decisions there must be political consensus between the government and the opposition.

The government has invested considerable efforts in resources- financial, technical, legislative and administrative reforms, and political will into reforming the public sector and establishing a sound and working fiduciary oversight system over the last 4 years. These reforms will continue to contribute to an improvement in transparency, accountability and good governance. These reforms will b make it easier to detect acts of corruption and reduce the opportunities for corruption.